

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE  
APRIL 19, 2022**

**ITEM 8**

**SUBJECT**

CONSIDERATION OF A PROPOSED RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OR DESIGNEE TO APPLY FOR, ACCEPT, AND/OR AMEND A FEDERAL SEWER OVERFLOW AND STORM WATER REUSE MUNICIPAL GRANTS (OSG) PROGRAM GRANT, AUTHORIZING THE DEPUTY DIRECTOR OF THE DIVISION OF FINANCIAL ASSISTANCE (DFA) TO NEGOTIATE, EXECUTE, AND/OR AMEND OSG PROGRAM FUNDING AGREEMENTS, AND AUTHORIZING THE DEPUTY DIRECTOR OF DFA TO PROVIDE PRINCIPAL FORGIVENESS AND PLANNING GRANTS TO DISADVANTAGED AND RURAL COMMUNITIES

**DISCUSSION**

Section 221 of the Federal Water Pollution Control Act (also known as the federal Clean Water Act) authorizes Congress to appropriate funds for the Sewer Overflow and Stormwater Reuse Municipal Grants (OSG) program. The OSG program can fund infrastructure needed to address combined sewer overflows (CSO), sanitary sewer overflows (SSO), and stormwater management.

In March 2021, United States Environmental Protection Agency (U.S. EPA) released its OSG Grant Implementation Document ([https://www.epa.gov/sites/default/files/2021-03/documents/osg\\_program\\_implementation\\_document.pdf](https://www.epa.gov/sites/default/files/2021-03/documents/osg_program_implementation_document.pdf)), which describes how U.S. EPA will administer the OSG funds and provide procedures for program implementation for relevant state agencies to issue sub-awards to eligible recipients.

On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA) of 2021 was signed into law and amended, among other statutes, section 221 of the federal Clean Water Act. The IIJA, among other things, amended the allocation of funds to rural and financially distressed communities under the OSG program.

The U.S. EPA received a \$28 million appropriation in federal fiscal year 2020, a \$40 million appropriation in federal fiscal year 2021, and a \$43 million appropriation in federal fiscal year 2022 for the OSG program.

The U.S. EPA will award grants to states to make sub-awards to eligible entities for eligible OSG projects as defined in the federal Clean Water Act. States are required to prioritize funding projects for communities that are (1) financially distressed (i.e., disadvantaged communities (DACs) and severely disadvantaged communities (SDACs) as defined in Clean Water State Revolving Fund (CWSRF) Intended Use Plan (IUP)); (2) applicants that have begun implementing a long-term municipal CSO or SSO

control plan and have implemented or are complying with an implementation schedule for the minimum controls specified in the CSO control policy referred to in Title 33 United States Code (U.S.C.) section 1342(g)(1); or (3) projects that have requested funding through the CWSRF. Projects under the OSG program will have many of the same program requirements as the CWSRF, and, to the extent there are sufficient eligible projects, at least twenty percent (20%) of a state's allocation must be used for green infrastructure, water and energy efficiency improvements, and other environmentally innovative activities.

California's allotment from the OSG program is 10.6% of the nationwide federal appropriations. Based on the federal appropriations for 2020, 2021, and 2022, California will be eligible to apply for and receive grant funds of approximately \$12 million.

As a condition of the grant awards, states must provide a non-federal cost share equal to twenty percent (20%) of the grant (state match). Sources of state match can be public and/or private funds, in-kind services, and may include loans (including loan forgiveness) from the CWSRF program.

To the extent there are sufficient eligible project applications, states shall use not less than twenty five percent (25%) of the OSG grants to carry out projects in rural communities (a city, town, or unincorporated area that has a population of not more than 10,000 inhabitants) or financially distressed communities, as defined by the state, and to the extent there are sufficient eligible project applications, states shall use not less than sixty percent (60%) of the twenty five percent (25%) to carry out projects in rural communities. Section 221 of the Clean Water Act prevents states from passing state match on to these communities.

The state fiscal year 2021/22 CWSRF IUP indicated that projects that applied for but were not funded as part of the Storm Water Grant Program (SWGP) might be funded with OSG funds. The final SWGP solicitation left 43 proposals, totaling nearly \$190 million, unfunded. With the additional funding through the OSG program, some of those projects could be eligible and could be funded. The IUP indicated that the Division of Financial Assistance (DFA) will coordinate with those applicants to fund them with OSG funds if they become available and ensure that all applicable OSG and SWGP requirements would be satisfied. The additional funding will support a continuation of the SWGP and assist communities with addressing stormwater, CSO and SSO pollution, and potentially putting stormwater runoff to beneficial reuse to support more resilient local water supplies.

The applicants associated with the 43 proposals from the SWGP were notified of the potential to receive OSG funds if the requirements of the OSG program can be satisfied. Six of these applicants expressed interest in the OSG program. Of those interested, three were awarded the remaining Proposition 1 technical assistance funds to refine their proposals in anticipation of the OSG program, one applicant was later awarded Proposition 1 funding for its project, and DFA staff continues to work with the remaining two interested applicants to develop potentially eligible projects for the OSG program.

The OSG program will be administered in accordance with section 221 of the federal Clean Water Act, as amended by the IIJA, and consistent with the U.S. EPA's OSG Grant Implementation Document to provide funding to the five projects discussed above with the additional criteria below:

1. The Deputy Director of DFA should have discretion to establish a deadline for the five entities noted above to submit full proposals for evaluation and award of OSG funds. If acceptable proposals from interested entities exceed the available grant funds, awards will be prioritized and made based on the following affordability criteria: (1) a city, town, or unincorporated area that has a population of not more than 10,000 inhabitants and a median household income (MHI) less than 60% of the statewide MHI; (2) a city, town, or unincorporated area that has a population of not more than 10,000 inhabitants and an MHI less than 80% of the statewide MHI; and (3) all other applicants. If requests are insufficient to use the available OSG funds, either because there is not enough interest or because the proposed projects are either not eligible or not ready for award, then DFA may direct the grant funds to eligible projects on the CWSRF IUP's Fundable List.
2. Under the OSG program, the State Water Board cannot pass on the state match requirements to rural and financially distressed communities. A CWSRF loan (including principal (loan) forgiveness) may be used to meet the state match requirement provided the CWSRF funding is not counted as an equivalency agreement. Thus, DFA also recommends that the Deputy Director of DFA be authorized to provide CWSRF principal forgiveness funding, on a non-equivalency basis, to meet the state match requirement for all applicants with an MHI less than 80% of the statewide MHI and/or applicants serving a population of 10,000 or less. Non-DAC applicants serving a population of more than 10,000 should be required to provide a minimum of 20% local match that will count toward the state match obligation required under the OSG program.
3. The OSG program requires a "National Environmental Policy Act (NEPA)-like" environmental review. Requiring a NEPA-like review process be completed prior to an executed OSG agreement poses financial hardship on applicants serving DACs or SDACs. Often, these communities do not have financial capability to produce the necessary environmental documents and/or applicable permits to meet funding requirements. Accordingly, DFA recommends that the Deputy Director of DFA should have the discretion of providing planning grants for DACs and SDACs to complete environmental documents and/or other planning activities necessary to execute an agreement for OSG implementation funding.

## **POLICY ISSUE**

Should the State Water Board adopt the resolution to authorize the Executive Director or designee to apply for, accept, and/or amend an OSG program grant?

Should the State Water Board delegate authority to the Deputy Director of DFA to negotiate, execute, and/or amend OSG program grant funding agreements with eligible entities for eligible projects as defined in the Clean Water Act?

Should the State Water Board authorize the Deputy Director of DFA to provide CWSRF principal forgiveness funds, on a non-equivalency basis, to meet the state match requirement for all DAC and SDAC applicants and applicants serving a population of 10,000 or less?

Should the State Water Board authorize the Deputy Director of DFA to provide planning grants for DACs and SDACs to complete environmental documents and/or other planning activities necessary to execute an agreement for OSG implementation funding?

## **FISCAL IMPACT**

The OSG grant funds require a minimum twenty percent (20%) state match from States. The state match can be provided at any time during the grant's project period and can be fulfilled with any combination of public sources, private sources, in-kind services, or loans (including loan forgiveness) from a CWSRF program.

The state match obligation for the OSG funds will be passed through to eligible entities which do not serve rural and financially distressed communities as part of funding eligible projects. The state match for rural and financially distressed communities would be met with CWSRF principal forgiveness funds. If all OSG funds were provided to rural and financially distressed communities, approximately \$2.4 million in CWSRF principal forgiveness would be needed. Currently the CWSRF has approximately \$84,800,000 in uncommitted principal forgiveness.

The OSG program grant allows up to four percent (4%) of the grant for the State Water Board's administration of the grant funds.

## **REGIONAL BOARD IMPACT**

There will be no direct impact to the Regional Water Quality Control Boards (Regional Boards). Accepting OSG funds will fund current and near-term projects that support the Regional Boards' stormwater regulatory efforts.

## **STAFF RECOMMENDATION**

The State Water Board should authorize the Executive Director or designee to apply for, accept, and/or amend an OSG program grant.

The State Water Board should delegate authority to the Deputy Director of DFA to negotiate, execute, and/or amend OSG program grant funding agreements with eligible entities for eligible projects as defined in the Clean Water Act.

The State Water Board should authorize the Deputy Director of DFA to provide CWSRF principal forgiveness funds, on a non-equivalency basis, to meet the state match requirement for all DAC and SDAC applicants and applicants serving a population of 10,000 or less.

The State Water Board should authorize the Deputy Director of DFA to provide planning grants for DACs and SDACs to complete environmental documents and/or other planning activities necessary to execute an agreement for OSG implementation funding.